IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

EX PARTE THE SUN PRINTING AND PUBLISHING ASSOCIATION,
Petitioner.

Petition for writ of certiorari requiring the United States Circuit Court of Appeals for the Second Circuit to certify to the Supreme Court for its review and determination the case of William L. Moore, Libellant-Appellant, versus The Sun Printing and Publishing Association, Respondent-Appellant.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

The petition of The Sun Printing and Publishing Association, a corporation, by Paul Dana, its president, respectfully shows to this Honorable Court as follows:

I.—Your petitioner was, at all times in the years 1898, 1899 and 1900, and is now, a corporation duly incorporated under and by virtue of the laws of the State of New York, and its principal business was then and is now the printing and publication of two newspapers called *The Sun* and *The Evening Sun*.

II.—This is a cause in Admiralty, and it was begun by the filing of a libel *in personam* in the District Court of the United States for the Southern District of New York by William L. Moore, as owner of the steam yacht *Kanapaha*, against The Sun Printing and Publishing Association, claiming to recover the sum of seventy-five thousand dollars ($75,000), with interest from October 1, 1898, for the failure and neglect of the respondent to surrender and deliver said yacht to the libellant, and in that said yacht, while in the charge and control of the respondent, was wrecked, and is a total loss.

Twelfth paragraph of Libel, Transcript of Record, p. 7, fols. 26 and 27.

III.—The *Kanapaha* was an old steam-yacht. She was built in 1880, and, therefore, eighteen years before she was lost. During this period of eighteen years no substantial repairs had been made to the vessel with the exception of renewing her boilers. She was, therefore, an antiquated vessel, built before the modern improvements in yacht building, and she was destitute of all such improvements. She had no electric lighting plant, no ice plant or refrigerating plant, all of which are essential features of modern yachts of her size. She had no new fittings of any kind. Everything about her was old. Her speed was low—about eleven or twelve knots an hour—while her consumption of coal was large, as might be expected from the date at which her engines were built. In short, she was an old boat, and of an old-fashioned type. It can be shown that her original cost at Cramps' was $59,000, and that she was sold four years later for $50,000. But these facts as to original cost are immaterial, because it was proven by uncontradicted evidence that her value in the summer of 1898 was not more than $30,000.

See testimony of Stephen B. Atkinson, Master, *Transcript of Record*, pp. 142, 143, 144; fols. 567–569; 571–574; pp. 146, 147, fols. 583–586.

IV.—In the month of March, 1898, an agreement was made between Chester S. Lord, the managing editor of *The Sun*, one of the newspapers published by the defendant corporation, and Thomas Manning, the agent for William L. Moore, the owner of the yacht *Kanapaha* and the libellant in this action, by which it was agreed in substance that Mr. Lord should hire the yacht for two months from April 1st, for the sum of $5,000. The stipulated price was duly paid, and the yacht was turned over to Mr. Lord. Before the expiration of the term for which the yacht was hired, a new agreement was entered into between the same parties on the 14th day of May, 1898, for a further letting of the yacht for the term of four months from June 1st to October 1st, for the sum of $10,000. The terms of this agreement, except as to the period of hiring and compensation, were identical with those of the previous agreement. There were two instruments, one in the nature of a charter-party, and the other in the nature of an agreement of suretyship, and it is upon these instruments that the present action is brought.

The alleged charter-party, which is printed as Libellant's Exhibit 4, reads:

"MEMORANDUM OF AGREEMENT made and entered into this 14th day of May, 1898, by and between William L. Moore of the City of New York, by Thomas Manning his Agent, party of the first part, hereinafter called the Owner, and Chester S. Lord of the City of New York, party of the second part, hereinafter called the Hirer.

WITNESSETH:

That the said William L. Moore being the owner of the steam yacht *Kanapaha* enrolled in the Atlantic Yacht Club, agrees to let and hereby does let, and the Hirer agrees to hire and hereby does hire, the said yacht as she is now for the term of four months from the first day of June expiring on the first day of October now next ensuing for the sum of Ten Thousand Dollars ($10,000.00) payable on the signing of this agreement.

That the Hirer will carry out the provisions of

the charter-party made on the first day of April last and will until the expiration of this contract keep said yacht in repair and will pay all its running expenses including amongst other things, uniforms, wages, provisions, pilotage, tonnage, light house and port dues and any and all other dues and charges and will surrender said yacht with all its gear, furniture and tackle at the expiration of this contract, to the Owner or his agent, at Manning's Basin. foot Twenty-sixth street, South Brooklyn, New York, in as good condition as at the start, fair wear and tear from reasonable and proper use only excepted and free and clear of any and all indebtedness, liens or charges of any kind or of any description.

That the hirer will use the said steam yacht as a yacht only and will under no circumstances use her to carry freight, merchandise or passengers for hire, nor do anything in contravention of its status as a yacht, nor in the sailing or navigating of the same do anything in contravention of the laws of the United States or of any foreign country.

That for the purpose of this charter the value of the yacht shall be considered and taken at the sum of Seventy-five thousand dollars ($75,000) and the said hirer shall procure security or guarantee to and for the owner in the sum of Seventy-five thousand dollars ($75,000) to secure any and all losses and damages which may occur to said boat or its belongings which may be sustained by the owner by reason of such loss or damage and by reason of the breach of any of the terms or conditions of this contract.

That in the event of the failure of the Hirer to return and surrender the said yacht to the Owner as hereinbefore provided, the Hirer shall be charged demurrage and shall pay demurrage to the Owner at the rate of Five Hundred Dollars ($500.00) per day for each and every day's detention.

The Hirer shall be liable and responsible for any and all loss and damage to hull, machinery, equipment, tackle, spars, furniture or the like.

That the Hirer during the continuance of this agreement shall at all times and at his own cost and expense, keep the said yacht, its hull, machinery, tackle, spars, furniture, gear, boats and the like, in repair.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

THOMAS MANNING,
CHESTER S. LORD,
For The Sun Printing and Publishing Association."

Transcript of Record, pp. 334–335; fols. 1333–1339.

The agreement of suretyship, Libellant's Exhibit 5, executed by Mr. Lord at the same time, reads as follows:

WHEREAS BY AGREEMENT or charter-party dated May 14th, 1898, William L. Moore of the City of New York, hereinafter called the Owner, did or is about to hire or charter unto Chester S. Lord of the City of New York, hereinafter called the Hirer, the steam yacht *Kanapaha*, enrolled in the Atlantic Yacht Club as will more fully and at large appear by a copy of said agreement or charter-party hereunto annexed and hereby made part hereof.

NOW AT THE REQUEST of the said Hirer and for valuable consideration received from him, and in consideration of one dollar ($1.00) from the said Owner received, and receipt whereof is hereby acknowledged.

WE, The Sun Printing and Publishing Company, of the City of New York, for ourselves and each of us, our successor or successors, and for each of our executors or administrators, enter into the following understanding and agreement of suretyship.

FIRST, that the said Hirer will well and faithfully perform and fulfill everything in and by the said annexed agreement on his part to be kept and performed.

SECOND, that we expressly waive and dispense with notice of any demand, suit or action at law against the Hirer and expressly waive any and all notice of non-performance of the terms of said annexed agreement on the part of the Hirer to be kept and performed. The intention of this understanding being to hold us primarily liable under the terms of the annexed agreement.

THIRD, that our liability hereunto shall in no case exceed the sum of Seventy-five Thousand Dollars ($75,000.00).

IN WITNESS WHEREOF we have hereunto set our hands this 14th day of May, 1898.

CHESTER S. LORD,
For Sun Printing and Publishing Association.

STATE OF NEW YORK, }
County of New York, } ss.:

On this 14th day of May, 1898, before me personally appeared Chester S. Lord, to me known and known to me to be the Managing Editor of The Sun Printing & Publishing Company, and who duly acknowledged that he executed the above undertaking for and on behalf of his firm under authority of said Company as its act and deed.

A. H. BRADLEY,
Notary Public,
New York.

[SEAL.]

Transcript of Record, pp. 335-336; fols. 1340-1344.

It will be noticed that the above instruments are inartificially drawn and in some respects contradictory.

Subsequently to the execution of the two instruments, the sum stipulated to be paid for the hire of the yacht, to wit, $10,000, was paid on May 16, 1898.

"The charter hire of $10,000, as the evidence shows, was paid by *The Sun's* check, which was dated on May 14th, the same date as the charter, but paid, according to the evidence, on May 16th."

Opinion of Judge Brown, Transcript of Record, p. 355, fol. 1419.

V.—The respondent-appellant, The Sun Printing and Publishing Association, is a corporation engaged in the business of publishing two newspapers. Its governing body at this time was a Board of Trustees composed of four persons—Paul Dana, the

president; Thomas Hitchcock, the secretary; William M. Laffan, the general manager, and Franklin Bartlett. Neither as a board nor individually did any of these persons take any part in the making or execution of these agreements. The record fails to show any knowledge on their part of the execution of such agreements. It fails to show any authority in the managing editor of the newspaper to make such agreements. It fails to show any act of ratification, formal or informal, on the part of such Board of Trustees of the particular terms of the agreements. It shows that the stipulated sum of money for the hire of the boat was paid out of the funds of the corporation; that the employees of the corporation had the use of the boat, and that the corporation paid its running expenses as well as some insurance premiums. Beyond this the record shows nothing. The numerous and onerous stipulations contained in the instrument signed by Mr. Lord, the managing editor, were absolutely unknown to the corporation, and, of course, were not acted upon.

VI.—The yacht went ashore on the night of September 5, 1898, near the coast of Cuba, on a reef not shown on the latest United States charts issued prior to her sailing, with which the vessel had been furnished. She became a total loss. The yacht having been lost as above stated, the covenant for her redelivery at the expiration of the term became impossible of fulfillment. The term for which she was hired expired on October 1st. The defendant had, at this time, no insurance upon the vessel.

The immediate cause of the stranding of the vessel was the extinguishing by the Spaniards of two conspicuous and important lights at the entrance of the harbor of Nuevitas, which formed the ordinary and indispensable guide to navigation at night in those waters. These lighthouses are thus described in the official publications of the Hydrographic Office:

"The Light House on Maternillos Point is 170 feet high, white, with the word Colon painted on it, and

exhibits, 174 feet above the sea, a fixed and flashing white light every 48 seconds, duration of flash 5 seconds. The light should be visible 17 miles."

The other extinguished light called the Eastern Point light, situated on Barlovento or Pilot Point, is thus described:

"On Barlovento or Pilot Point, the east side of the entrance, is a quadrangular building painted yellow, and a white mast stands in the middle of it, from which is exhibited, 48 feet above the sea, a white light visible 9 miles."

And we also find the following statement:

"The entrance of the harbor may be recognized by the Maternillos lighthouse, by three small hills on the south side of the harbor, and by three islets in the harbor called Los Ballenatos, a little higher than the surrounding land. Also on the east side of the entrance is a quadrangular building painted yellow, surmounted by a white mast, from which is shown a light."

Libellant's Exhibit No. 21.

Transcript of Record, pp. 344–345; fols. 1373, 1378–1380.

The master testified:

"I had been informed that the lights on the north side of Cuba had been relit and were burning" and that "the stranding would have been avoided" if the light had been burning.

Transcript of Record, pp. 133–136; fols. 532, 533, 536–539, 541–544.

The above evidence showing that the loss of the yacht was caused by no want of skill in navigation and by no fault on the part of the vessel, was evidently not considered by the trial Court in making its decision, the defendant being held liable entirely apart from any question of the care used in the navigation of the vessel.

VII.—The cause came on for trial in the United States District Court for the Southern District of New York, before Judge Addison Brown, on April 14, 1898.

Transcript of Record, p. 35, fols. 137–138.

Upon the trial before Judge Brown the Court expressly refused to consider auy and all evidence as to the value of the yacht, and as to the amount of the loss and damage which the libellant had sustained by reason of her destruction. The Court stated in reference to a motion to strike out evidence from the deposition of Captain Atkinson on the subject of the value of the vessel:

"I shall strike out nothing from the deposition. I will note that on this hearing no evidence as to damages will be considered, that all such evidence is to be reserved for hereafter."

* * * * * * *

"I rule that all the evidence in Captain Atkinson's deposition relating to damages is not considered as received upon this present hearing, but that that evidence and all other evidence on damage is reserved for future consideration in case any decree should be found for the libellant."

Transcript of Record, p. 281, fols. 1123, 1124.

And agaid the Court said:

"No evidence on the question of damages is considered at this time."

Mr. Hughes: We understand that that includes the evidence as to the value of the yacht?

The Court: Of course."

Transcript of Record, p. 282, fol. 1125.

No further opportunity was given to introduce evidence on the subject of value, and it is evident from from the opinion of the Court that such evidence was not considered.

VIII.—By the final decree it was

"Ordered, adjudged and decreed, that the libellant recover from the respondent the sum of sixty-five thousand dollars ($65,000), with interest thereon from October 1, 1898, amounting to three thousand four hundred and eighty-eight $\frac{34}{100}$ dollars ($3,488.34) together with the sum of one hundred and forty-one $\frac{03}{100}$ dollars ($141.03) for his costs and disbursements as adjusted, amounting in all to the sum of sixty-eight thousand six hundred and twenty-nine $\frac{37}{100}$ dollars ($68,629.37)."

Transcript of Record, pp. 358, 359, fols. 1432, 1433.

It appears from the opinion (*Transcript of Record*, pp. 354–357, fols. 1425–1428), that the amount of the damage was arrived at by taking the figure $75,000 named in the old charter-party, and deducting therefrom the sum of $10,000, which was the amount of the charter hire. The Court expressly states in reference to the $75,000 clause: "This means, I think, the value (of the yacht) at the beginning of the charter period."

Transcript of Record, p. 356, fol. 1421.

The evidence, therefore, as to the actual value, and consequently as to the actual loss, was entirely disregarded. and the determination of the damages was arrived at by taking the figure named in the instrument as a starting point.

It is contended on the part of the petitioner that assuming the agreement of suretyship to be binding upon it, it was an agreement only to secure the loss and damage "which may occur to said boat or its belongings which may be sustained by the owner by reason of such loss or damage, and by reason of the breach of any of the terms or conditions of the contract,"—in other words, an agreement to pay *actual* loss or damage to the boat and *actual* loss or damage to the owner from non-performance

of covenants; that the sum of $75,000 mentioned therein must be regarded as in the nature of a penalty in the bond and not of liquidated damages; and that by reason of these facts, assuming that a liability existed at all, it should be measured by evidence of actual loss, or in the case of the destruction of the vessel and failure to return it, by the *actual value* of the vessel.

The effect of any other interpretation is to make this respondent pay either $75,000, or, according to the trial Court, $65,000, for the loss of a boat eighteen years old, whose value, according to the rejected evidence, was stated to be $30,000—in other words, to pay from thirty-five to forty-five thousand dollars more than her value. Such an injustice resulting from an incorrect enunciation of the law, merits the attention of the highest tribunal, not only in the importance of the principle which the Court has disregarded, but in the excessive hardship of the result and the magnitude of the sum which the respondent is called upon to pay.

IX.—On the question of the ratification by the defendant of the acts of Lord, Judge Brown held that the circumstances "leave no doubt of the ratification by the defendant of Mr. Lord's acts, equivalent to an original authority."

Transcript of Record, p. 354, fol. 1414.

It is contended by your petitioner that the only ratification, if any, which can be predicated on the act of the defendant, extended to the mere user of the vessel, and that assuming that the amount named, $75,000, is to be regarded as liquidated damages, there was no ratification of this and other oppressive terms of Lord's contracts, as there can be no ratification without knowledge.

X.—From the final decree and judgment of the District Court the respondent duly appealed to the United States Circuit Court of Appeals for the Sec-

ond Circuit. The libellant also appealed from the decision, in that it reduced the alleged contract liability by the deduction of $10,000 from the sum of $75,000 mentioned in the contract.

Transcript of Record, pp. 359, 360, fols. 1435–1437.

The appeal to the United States Circuit Court of Appeals for the Second Circuit was argued before said Court, consisting of Judges Wallace, Lacombe and Shipman, on the 9th and 12th days of March, 1900, and on the 3d day of April, 1900, the said Court handed down an opinion holding that the Trial Court erred in awarding the libellant only $65,000 as damages for the loss of the yacht, and modifying the decree of the Court below by adding $10,000 to the sum already found against the respondent, and instructing the Court below to decree for the libellant in the sum of $75,000 and interest from October 1, 1898, together with the costs of the Appellate Court.

The decree of the United States Circuit Court of Appeals herein was signed on the 17th day of April, 1900, and the mandate of said Court to the District Court was thereupon issued.

XI.—As appears from its opinion, the Appellate Court held with the Trial Court on the question of ratification.

Upon the argument it was "insisted for the charterer that the yacht perished without any fault on the part of those who were navigating her, and consequently that the case is one for the application of the principle well settled in the law of bailments, that the hirer is absolved from further obligation where the hired thing is destroyed without his fault, so that redelivery to the bailor is impossible," and the case of *Young* v. *Leary* (135 N. Y., 569), was relied on in support of this contention. The Appellate Court, as appears by its opinion, admitted that such was the effect of the case cited, but overruled it on the authority of certain Massachusetts cases

(Opinion, p. 5), and decided that the hirer was liable notwithstanding the destruction of the vessel and the consequent impossibility of its redelivery.

Upon the question whether the amount named in the instrument, namely, $75,000, should be considered as liquidated damages or as a penalty, the Court entirely disregarded the principle, repeatedly approved by the highest State courts and by the Circuit Courts of Appeals, as well as by many English decisions, that even though a sum is expressly stated in a contract to be liquidated damages, the Courts will disregard such a statement where the amount named is disproportionate to the presumable or probable loss, and will hold that the intention of the parties, notwithstanding the express language used, was to make the sum named a penalty.

The Court further held apparently as matter of law, that it is impossible to ascertain the value of a yacht, stating that the Court "may take judicial notice that the market value of yachts is a very uncertain quantity" (*Opinion*, p. 6).

It is contended that this erroneous statement of the law, involving a principle of the gravest importance, not only has the effect of increasing the liability of the respondent, assuming that there is a liability, by some $40,000, but it has also the effect of setting up the authority of one of the Circuit Courts of Appeals for an erroneous exposition of the law, of throwing into confusion the decisions of those courts, by reason of a divergence in their opinions, and hence of calling for the interposition of a final tribunal to determine between them, thereby fulfilling the purpose of the statutory provision with reference to the granting of the writ of *certiorari*.

Finally, upon the question decided by the trial Court, that assuming $75,000 to be the limit of liability, this amount should be reduced by the hire of the yacht, namely, $10,000, already paid by the defendant, the Appellate Court overruled the District Court by fixing the amount of the judgment at

$75,000, compelling the charterer to pay altogether the sum of $85,000, when its liability had been expressly limited to $75,000 by the agreement upon which this action was brought.

It appears from the opinion (*Transcript of Record*, pp. 355-357, fols. 1417-1428) that the Court below based its determination of the amount of the judgment upon the fact that the sum of $75,000 named in the two instruments was a "security or guarantee to the owner in the sum of $75,000 against any and all loss and damage which may occur to said boat or its belongings, which may be sustained by the owner by reason of such loss and damage and by reason of the breach of any of the terms or conditions of this contract."

One of these terms or conditions was the covenant to pay the hire of the yacht, namely $10,000, which sum was actually paid by the respondent, subsequently to the execution of the agreements, by which payment, in the language of the trial Judge, "so much of its obligation of $75,000 has, therefore, been discharged by the *The Sun*" (*Transcript of Record*, p. 355, fol. 1419). The opinion also refers to "the express provision of the second instrument, called the agreement of suretyship," "that in no case shall the liability of *The Sun* exceed the sum of $75,000," and says: "Even if the two agreements be regarded as virtually one, as it would seem they must be, still this latter clause must control the general expressions preceding; and this leaves, after *The Sun's* payment of $10,000 for the charter hire, but $65,000 principal as the limit of any further obligation on its part."

Transcript of Record, p. 355, fols. 1419, 1420.

It is contended on the part of the petitioner that, assuming the agreement of suretyship to be binding upon it, and that the sum of $75,000 is to be regarded as liquidated damages, both of which are denied, yet the trial Court was right in reducing the amount

by $10,000, which the respondent had already paid in fulfillment of the liability covered by its bond; that the total liability of the respondent could not exceed the sum of $75,000; that by reason of these facts, assuming that a liability existed at all, in measuring which the evidence of actual loss, or in other words, of the actual value of the vessel was to be disregarded—assuming, in short, that every other point was decided against *The Sun*,—its liability could in no case exceed the sum of $75,000, and that any payment made by the respondent in satisfaction of its liability to the libellant, under the charter-party and the contract of suretyship, was to that extent a discharge of its entire obligation, which was in no case to exceed the sum of $75,000, and finally, that the trial Court was, therefore, correct in deducting from the total liability the sum of $10,000, which was the amount paid for the hire of the vessel.

XII.—All proceedings on the part of the libellant herein have been stayed by order of Judge Brown of the said District Court for the purpose of enabling your petitioner to apply to the Supreme Court of the United States for the writ of *certiorari* now applied for.

XIII.—A certified copy of the entire record of this cause in the said United States Circuit Court of Appeals is herewith furnished, and is hereunto annexed in accordance with Rule 37 of this Honorable Court relative to cases from Circuit Courts of Appeals, and the same is marked Exhibit "A."

XIV.—Your petitioner is advised and believes that the said judgment of the said United States Circuit Court of Appeals in this cause is erroneous, and that this Honorable Court should require this case to be certified to it for its review and determination under and in conformity with the provisions of the sixth section of the Act of Congress, entitled "An Act to establish Circuit Courts of Ap-

peals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, the said case being made final in the said Circuit Court of Appeals by the said Act.

XV.—The importance and gravity of this cause to your petitioner will be recognized from the fact that through the decree of the United States Circuit Court of Appeals your petitioner will be compelled to pay to the libellant for its failure to redeliver the yacht the sum of seventy-eight thousand dollars ($78,000), more than double the market value of the wrecked vessel according to the undisputed evidence.

Your petitioner respectfully claims:

FIRST.—That as the charter-party herein provided for the delivery of the vessel at the port of New York in as good condition as at the start, fair wear and tear from reasonable and proper use only excepted, the destruction of the yacht or the thing hired, without your petitioner's fault, pending the continuance of the contract, relieved your petitioner from the obligation.

SECOND.—That if your petitioner is liable in any amount, it is liable to the libellant only for the fair market value of the yacht at the time of its destruction, and that the sum of seventy-five thousand dollars ($75,000) mentioned in the charter-party and in the agreement of suretyship, is to be regarded as a penalty, and not as liquidated damages.

THIRD.—That the charter-party and agreement of suretyship were never authorized or ratified by the defendant corporation, and that all that was ratified was the hiring or user of the yacht, and not the extraordinary and oppressive provisions of the instruments as to which the minds of the libellant and the defendant corporation never met.

FOURTH.—That in any case the liability of the defendant under the two instruments in question was expressly limited to $75,000, and if its liability should be found to equal this amount, the judgment herein should be reduced by the sum of $10,000 already paid under the charter-party.

WHEREFORE, your petitioner respectfully prays that a writ of *certiorari* may be issued out of and of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the said Court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein, entitled William L. Moore, Libellant-Appellant, *versus* The Sun Printing and Publishing Association, Respondent-Appellant, number 123, to the end that the said case may be reviewed and determined by this Court, as provided in section 6 of the Act of Congress, entitled "An Act to establish Circuit Courts of Appeals, and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891, or that your petitioner may have such other or further relief or remedy in the premises as to this court may seem appropriate, and in conformity with the said act, and that the said judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Court.

And your petitioner will ever pray, &c.

THE SUN PRINTING AND PUBLISHING ASSOCIATION,
By PAUL DANA,
President.

FRANKLIN BARTLETT,
Attorney and Counsel for Petitioner.

We certify that in our opinion the above petition is well grounded in matter of law, and proper to be heard.

JAMES RUSSELL SOLEY,
FRANKLIN BARTLETT,
Of Counsel for Petitioner.

STATE OF NEW YORK,
Southern District of New York, } ss.:
County of New York,

PAUL DANA, being duly sworn, says: That he is the President of The Sun Printing and Publishing Association, the petitioner above named; that he has read the said petition by him subscribed; and that the facts therein stated are true to the best of his information and belief.

PAUL DANA.

Sworn to and subscribed before me this 28th day of April, 1900.

A. H. BRADLEY,
Notary Public,
N. Y. Co.